



### **3.19 TRIBAL TRUST RESOURCES AND OTHER INDIAN TRIBAL ISSUES**

This section addresses the responsibilities of the federal government with respect to Indian tribal trust resources and other Indian resources (e.g., traditional cultural properties) and discusses in broad terms the potential impacts to these resources that may be anticipated under the various alternatives. This section also presents the status of government-to-government consultation with Indian tribes that may be affected by the proposed HCP and land acquisition. Impacts to specific tribal trust resources, such as fisheries, wildlife, or plants, are discussed in their respective sections in the EIS/EIR (Sections 3.8, 3.10, and 3.9).

#### **3.19.1 Affected Environment —**

##### **Ethnographic/Ethnohistoric Background**

Section 3.15 provides ethnographic and ethnohistoric backgrounds for the Project Area, including the linguistic affiliations, settlement and subsistence patterns, and social organization, as well as material, cultural, and recorded history of Indian groups who have occupied and used the Project Area in the past. As noted in Section 3.15, Indian groups whose aboriginal territory includes the Project Area are descendants of the earliest settlers of the area. These groups include the Wiyot, the Bear River, the Mattole, the Sinkyone, and the Nongatl. The Whilkut, Hupa, Chilula and Yurok to the north of the Project Area are also likely to have made seasonal subsistence use of the area, and intertribal marriage and trade also probably involved movement across territorial boundaries (Wallace, 1978; Pilling, 1978; Davis, 1974). Figure 3.15-1

in Section 3.15 shows the approximate aboriginal territories of these groups.

Today, there are several rancherias and reservations in the region. The Table Bluff Rancheria to the west and the Blue Lake Rancheria to the north of the Project Area are home to several Wiyot families. The Rohnerville Rancheria was terminated in 1958, but is still occupied by several families from the Bear River Band of the Wiyot. The Hoopa Valley Reservation to the north is the largest reservation in California and is primarily occupied by Hupa, Whilkut, Chilula, and Yurok peoples. The Yurok Reservation, also to the north, extends 0.1 mile to either side of the Klamath River. The Yurok Tribe has recently obtained THPO status. This means the Yurok Tribe has also recently been made the CHRIS Information Center for all of Humboldt and Del Norte counties.

The discovery of Indian tribal concerns and issues is proceeding through participation of tribal organizations and members in the EIS/EIR public scoping process and through a separate, but parallel, ongoing government-to-government consultation process. Lists of Indian contacts for the Humboldt area lands, including individuals, tribal council representatives, and reservation or rancheria chairpersons, were provided by the Native American Heritage Commission and the U.S. Bureau of Indian Affairs (BIA). These lists are included in Appendix O. The listed contacts represent 14 Indian tribes or bands, all of which are

federally recognized Indian tribes. The FWS and NMFS have initiated contact to solicit input from the tribes on the project. A letter and a complete Draft HCP were mailed to all 14 of the tribes or bands. The Services will follow up on this initial contact with a government-to-government consultation with those groups that express interest in this level of involvement on the project. In addition, CDF has a separate process for consultation with Indian tribes and groups regarding THPs. This process is guided by the FPRs (see Section 3.19.2).

Members of Indian tribes and groups in Humboldt County may have an interest in various locales, including sacred areas, places of origin and cultural importance (e.g., burial sites), and sites where traditional gathering activities for subsistence or ceremony occurred. To date, no traditional cultural properties have been identified within the Project Area. Since this area has been in private ownership for over 100 years, such properties are unlikely. In addition, the Headwaters area may have spiritual significance to members of Indian tribes and groups.

### 3.19.2 Environmental Effects and Proposed Mitigation

This section describes the environmental effects on tribal trust resources and other tribal issues. First the legal and regulatory environment is presented, followed by the thresholds of significance for these effects and a detailed discussion of the effects.

#### 3.19.2.1 Legal and Regulatory Environment —Tribal Trust Resources

Processing an application for incidental take under the FESA is the responsibility of the FWS and NMFS. In doing so, the Services must comply with all federal laws, regulations, and orders, including those pertaining to tribal trust resources. Secretarial Order #3206, signed by both Interior Secretary Bruce Babbitt and Commerce Secretary William Daley on

June 5, 1997, is intended to clarify the relationship of the FESA to tribal land, tribal trust resources, and tribal rights and to establish guidance for considering effects on Indian tribes and tribal resources and rights resulting from FESA actions. Secretarial Order #3206 is discussed in greater detail below. According to the order, "Tribal trust resources" are "natural resources, either on or off Indian lands, that are retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States."

Although Secretarial Order #3206 does not change the legal mandates of the FESA, it does direct the FWS and NMFS, as administrators of the act, to "recognize their special responsibility to include the Indian community" in activities that may impact members of that community. The order strives to ensure that existing tribal resource management practices and plans are taken into consideration and that members of Indian tribes "do not bear a disproportionate burden for the conservation of listed species on their lands." The order consists of five principles directed towards these goals. Section (3)(D) of the Appendix specifically addresses habitat conservation planning. This section of the appendix instructs the Services to do the following:

- Solicit and incorporate traditional knowledge and expertise in habitat conservation planning that may affect tribal trust resources or the exercise of tribal rights.
- Consult with affected Indian tribes on the effects of a proposed HCP on tribal trust resources, provide this information to the HCP applicant before submission of the Draft HCP for public comment, and encourage HCP applicants to cooperate directly with affected Indian tribes.

- Advocate for the incorporation of measures into an HCP that will restore or enhance tribal trust resources.
- Encourage tribal governments to get involved early in the development of region-wide or statewide habitat conservation planning measures.

Other federal laws and guidance that may apply to Indian tribal trust resources and other Indian issues within the terms of the project include the AIRFA; the NAGPRA; National Register Bulletin No. 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*; an April 29, 1994, executive memorandum on government-to-government relations with Native American tribal governments; a May 24, 1996, executive order on the treatment of Native American sacred sites; the NHPA; and NEPA.

### 3.19.2.2 Thresholds of Significance

The threshold of significance for effects to tribal trust resources would be reached if tribal trust fisheries, wildlife, or plant resources would negatively impact the success that tribal members have harvesting fish, wildlife, or plant resources downstream of the Project Area or if tribal members' access to these resources on federal lands were negatively impacted. The thresholds of significance for effects to properties of religious and cultural importance to Indian tribes (traditional cultural properties) are the same as the criteria used to evaluate whether the actions of a federal agency will have an adverse effect on a historic property (by definition a significant effect), contained in 36 CFR 800.9(b). These criteria are as follows:

An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's

location design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

1. Physical destruction, damage, or alteration of all or part of the property;
2. Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;
3. Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
4. Neglect of a property resulting in its deterioration or destruction; and
5. Transfer, lease, or sale of the property.

An important feature of a traditional cultural property is continuity of access and use (although National Register Bulletin No. 38 states that traditional cultural use may exist in areas where access has been restricted for long periods of time, if there is evidence that individuals or groups maintained an interest in the property during this time). Therefore, in addition to effects to the physical condition of traditional cultural properties, a threshold of significance would be reached if the ability of traditional cultural practitioners or other members of an Indian group to access a traditional cultural property were severely restricted.

### 3.19.2.3 Environmental Effects — Alternatives 1 to 4

As noted in Section 2.5.1, the evaluation of the No Action/No Project differs under CEQA and NEPA. For CEQA the No Action alternative is not projected into the long-term future. In the short term, the conformance with the FPRs, the FESA and CESA, and other federal and state laws is determined on a THP and site specific basis. A wide variety of mitigation measures tailored to local conditions is applied with the purpose of avoiding significant environmental effects and take of listed species. Consequently, most significant environmental effects of individual THPs can be expected to be mitigated to a level of less than significant through implementation of the No Action/No Project alternative.

As noted in Section 2.5.1, the NEPA evaluation of the No Action alternative considers the implementation of wide, no-harvest RMZs as well as restrictions on the harvest of old growth redwood forest to model conditions over the short and long term. Ranges of RMZs are considered qualitatively because it is expected that adequate buffer widths could vary as a result of varying conditions on PALCO lands.

Members of Indian tribes and groups in Humboldt County may have an interest in various locales, including sacred areas, places of origin and cultural importance (e.g., burial sites), and sites where traditional gathering activities for subsistence or a ceremony occurred. To date, no traditional cultural properties have been identified within the Project Area. Access to the privately held project lands by the public, including traditional cultural practitioners, is already restricted. Traditional cultural practitioners may benefit from renewed access to lands incorporated into the Headwaters Reserve following the land acquisition. If properties

of traditional religious or cultural significance are identified within the Headwaters Reserve, the BLM may consider limiting access to these areas to traditional cultural practitioners. This type of management action may be considered under the schedule of activities to be developed for the Headwaters Reserve, which would be subject to separate NEPA and CEQA review and is, therefore, not evaluated here. As noted above, the Headwaters area may have spiritual significance to members of Indian tribes and groups. A purpose or goal of establishing the Headwaters Reserve is to preserve this significance for everyone.

Members of Indian tribes and groups may also have an interest in fishing, hunting, and gathering of plants and in the protection of fisheries, wildlife, plant, and other tribal trust resources downstream of the privately held project lands. Although the Intertribal Coalition for Native Stewardship of the Headwaters (see below) has expressed general concerns regarding impacts to tribal trust resources and use of these resources by members of Indian tribes, no specific concerns have been brought to light. Effects of the various project components (SYP/HCP provisions and management of the Headwaters Reserve) on fish, wildlife, and plants are discussed in the respective resource sections of this EIS/EIR (Sections 3.8, 3.10, and 3.9).

NAGPRA is the federal law that addresses the treatment of Indian burial sites and grave goods. In the case of inadvertent discovery of an Indian burial site, human remains, or grave goods during logging or any of the other HCP-component activities (e.g., road construction and streambed enhancement projects) on PALCO lands, all work near the find should immediately cease until the Humboldt County coroner and the most likely descendent are

consulted regarding the appropriate course of action.

In addition, state law protecting Indian sacred sites is found in the PRC, Chapter 1.75, beginning at Section 5097.5 (*Native American Historical, Cultural and Sacred Sites*). The FPRs also contain provisions for consulting with members of Indian tribes and groups regarding the impacts of timber harvest operations. Specifically, the California FPRs require that the RPF or RPF's supervised designee provide written notification of the THP location to Native Americans on the current Native American Contact List, which the NAHC provides to CDF. The RPF must allow at least 10 days for notification and response before submitting the THP. In addition to this waiting period before submittal, the RPF must allow a 45-day review period after submittal [14 CCR Section 929.1]. The Native American Contact List includes all tribes, representatives of tribes, and Native American individuals who have responded to NAHC consultation and who have expressed an interest in commenting on THPs within each county of California. The list includes federally recognized tribes as well as tribes that have not obtained federal recognition. Federally recognized tribes that have responded to NAHC consultation and have expressed no interest in commenting on THPs are not included. This list, which overlaps but is not identical to the contact list provided by the BIA, is included in Appendix O.

Indian tribes in Humboldt County have expressed an interest in directly acquiring portions of the Headwaters Forest from PALCO through a cash purchase. While the federal and state governments do not intend to impede such actions, discussions of impacts to exchanges between private parties that do not include the federal or state governments are outside the scope of this EIS/EIR.

Directly related to the proposed project, the Intertribal Coalition for Native Stewardship of the Headwaters, including "the Bear-River-Mattole Tribe, the Wiyot Tribe of California, the Seventh Generation Fund, and other concerned Native organizations," has formally submitted a proposal, titled "Intertribal Land-Trust and Native Stewardship Proposal for the Headwaters." This document states that the Headwaters, "is known and recognized as a spiritually significant domain in both the historic and contemporary lives of the aboriginal peoples" and "holds a sacred vitality as the spiritual center of the Wiyot and Eel River tribal homelands." The document proposes that the Headwaters Forest "be returned to Native ownership and that an Intertribal land trust be established for managing the forest under the principles of traditional Native stewardship." This proposal was considered as an alternative for this EIS/EIR (see Chapter 2). After consideration of the proposal, the USDI decided not to adopt it because the basic concepts of land management under the proposed intertribal land trust are captured in the proposed management action and because the USDI has determined that the area should be managed and held in trust for all members of the public. Although this alternative was not selected for detailed analysis in the EIS/EIR, Indian tribes are invited to participate in development of the Headwaters Reserve Management Plan.

### Comparison of Alternatives

At this time, it is expected that there will be no effect on traditional cultural properties under the No Action/No Project Alternative or any of the action alternatives, since no traditional cultural properties are known or believed to exist on the project lands. More information may be gained through government-to-government consultation with the tribes.

### 3.19.3 Cumulative Effects

Because no significant effects to tribal treaty resources or traditional cultural properties are anticipated, no adverse cumulative effects are anticipated to occur.

### 3.19.4 Mitigation

Because no significant direct, indirect, or cumulative effects are expected to tribal trust resources, no mitigation is required.